

# **Exhibit 1**

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5 -and-

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10 Attorneys for Plaintiff and Counter-Defendant  
ALL NIPPON AIRWAYS COMPANY, LTD.

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 ALL NIPPON AIRWAYS COMPANY,) Case No. C07-03422 EDL  
15 LTD., )  
16 Plaintiff, )  
17 vs. )  
18 UNITED AIR LINES, INC., )  
Defendant. )

**DECLARATION OF  
MARSHALL S. TURNER  
IN OPPOSITION TO  
DEFENDANT'S  
RENEWED MOTION TO  
COMPEL**

**Hearing Date: March 11, 2008  
Hearing Time: 9:00 a.m.  
Hearing Place: Courtroom of Hon.  
Elizabeth D. Laporte**

19  
20 AND RELATED COUNTER-CLAIM )

21  
22 **DECLARATION OF MARSHALL S. TURNER**

23 Marshall S. Turner, being duly sworn, deposes and says:

24 1. I am an attorney and a member of the law firm of Condon & Forsyth LLP,  
25 attorneys for plaintiff and counter-defendant All Nippon Airways Co., Ltd.  
26 ("ANA") in the above-captioned matter. I make this declaration in Opposition to  
27 Defendant's Renewed Motion to Compel Discovery and for Additional Time to  
28 Depose Witnesses.

1       2. On July 24, 2007, UAL served ANA with a Notice of Taking Video  
2 Depositions and document requests for the three ANA pilots on board Flight  
3 NH007 at the time of the Accident, which noticed the depositions for San  
4 Francisco. Attached hereto as Exhibit A is a true and correct copy of the  
5 deposition notice.

6       3. On September 12, 2007, UAL served ANA with an Amended Notice of  
7 Taking Video Depositions and document requests for these same witnesses, which  
8 noticed the depositions for Los Angeles. Attached hereto as Exhibit B is a true and  
9 correct copy of the deposition notice.

10       4. On September 27, 2007, UAL served ANA with a Second Amended Notice  
11 of Taking Video Depositions and document requests for these same witnesses.  
12 Attached hereto as Exhibit C is a true and correct copy of the deposition notice.

13       5. On November 16, 2007, UAL served ANA with a Third Amended Notice  
14 of Taking Video Depositions and document requests for these same witnesses.  
15 Attached hereto as Exhibit D is a true and correct copy of the deposition notice.  
16 On November 19, 2007, UAL served ANA with a Fourth Amended Notice of  
17 Taking Video Depositions and document requests for these same witnesses.  
18 Attached hereto as Exhibit E is a true and correct copy of the Fourth Amended  
19 deposition notice. These November notices contained additional document  
20 requests that were not requested in the previous notices. I did not receive either of  
21 these notices until November 19, 2007, at which time I transmitted them to ANA's  
22 legal department. However, I was unable to provide the new notices to the  
23 witnesses until the first day after the Thanksgiving Day holiday which was the day  
24 before their respective depositions were to commence on November 26, 2007.

25       6. The November document requests were directed to the witnesses and, as  
26 each Notice states, "Deponent(s) are requested to bring with them to the deposition  
27 the documents requested on the attached Exhibit A."  
28

1       7. On October 12, 2007, UAL served ANA with its First Request to Produce.  
2 Attached hereto as Exhibit F is a true and correct copy of UAL's Request. On  
3 November 13, 2007, ANA served UAL with its Response to UAL's First Request  
4 to Produce and produced documents in response thereto. Attached hereto as  
5 Exhibit G is a true and correct copy of ANA's Response to UAL's First Request to  
6 Produce. On December 13, 2007, ANA served UAL with its Supplemental  
7 Response to UAL's First Request to Produce and produced additional documents.  
8 Attached hereto as Exhibit H is a true and correct copy of ANA's Supplemental  
9 Response.

10       8. The depositions of ANA's flight crew were conducted on November 27, 28  
11 and 29, 2007 in San Francisco. Attached hereto as Exhibit I is a true and correct  
12 copy of the deposition transcript of Eishin Yamaguchi. Attached hereto as Exhibit  
13 J is a true and correct copy of the deposition transcript of Yusuke Nishiguchi.  
14 Attached hereto as Exhibit K is a true and correct copy of the deposition transcript  
15 of Teruo Usui.

16       9. I conducted all discussions with UAL on behalf of ANA concerning the  
17 scheduling of depositions of ANA's flight crew. Although we discussed the  
18 possibility that it might be easier to schedule the depositions of the three pilots on  
19 consecutive days, if Los Angeles were an option, I never requested or agreed that  
20 the depositions take place in Los Angeles.

21       10. In his letter of July 17, 2007, UAL's counsel Scott R. Torpey states, "The  
22 depositions would take place at a location in San Francisco." Attached hereto as  
23 Exhibit L is a true and correct copy of Torpey's July 17, 2007 letter. On July 24,  
24 2007, UAL noticed the depositions for San Francisco. See Exhibit A.

25       11. In my letters of August 7, 2007 and August 30, 2007, I advised UAL's  
26 counsel that ANA expected to be able to produce the witnesses in San Francisco or  
27 Los Angeles. Attached hereto as Exhibit M are true and correct copies of my  
28

1 August 7, 2007 and August 30, 2007 letters. In my letter of September 7, 2007, I  
2 again offered to produce at least two witnesses in the United States “in the same  
3 city,” but did not request that such city be Los Angeles. Attached hereto as Exhibit  
4 N is a true and correct copy of my September 7, 2007 letter.

5 12. In his letter of September 12, 2007, Torpey advised that he had chosen to  
6 notice the depositions for Los Angeles, but also offered that having the depositions  
7 in San Francisco would be “no problem.” Attached hereto as Exhibit O is a true  
8 and correct copy of Torpey’s September 12, 2007 letter.

9 13. In my letter of November 7, 2007, I confirmed that the depositions would  
10 take place in San Francisco. Attached hereto as Exhibit P is a true and correct  
11 copy of my November 7, 2007 letter. In an email of November 19, 2007 I again  
12 confirmed that the pilot depositions would take place in San Francisco. In his  
13 email of November 19, 2007, Torpey admitted to having seen my letter of  
14 November 7, 2007, but stated, “As for your November 7 letter, I assumed you  
15 meant LA.” Attached hereto as Exhibit Q is a true and correct copy of my  
16 exchanges of emails with Torpey on November 19, 2007.

17 14. UAL’s request for “ANA Operations Manual” was not included in UAL’s  
18 deposition notices until its final two deposition notices, which were received only  
19 eight days before the depositions were to begin and three days before the  
20 Thanksgiving break. See Exhibits A-E. Given the shortage of UAL’s notice and  
21 the fact that the ANA witnesses were traveling from Japan to San Francisco, each  
22 pilot did not see the latest notice request until the day before his respective  
23 deposition. In any event, responsive documents are proprietary company  
24 documents that the pilots do not maintain under their personal control.  
25 Nonetheless, the witnesses were able to obtain the pages of this document that are  
26 relevant to this litigation from ANA’s legal department and produced same at their  
27 depositions.  
28

1 15. During the depositions of UAL's flight crew in San Francisco on January  
2 23 and 24, 2008, a face-to-face "meet and confer" was conducted to attempt to  
3 resolve discovery disputes. As a result of this meet and confer, ANA has produced  
4 both the Japanese and English versions of their Operations Manual currently in  
5 effect in their entirety under Bates Nos. ANA 001647 through 002074 and ANA  
6 004479 through 005008 and its Boeing 777 Airplane Operations Manual currently  
7 in effect in its entirety under Bates Nos. ANA 002175 through 004478. Attached  
8 hereto as Exhibits R and S are true and correct copies of my February 1, 2008 and  
9 February 8, 2008 letters which accompanied the production of these documents. A  
10 true and correct copy of ANA's letter of January 30, 2008 summarizing UAL's  
11 obligations arising from the meet and confer is attached hereto as Exhibit Z.

12 16. The Operations Manual in effect on October 7, 2003 no longer exists. I  
13 have repeatedly offered to reconstruct any section of the Operations Manual and  
14 B777 Airplane Operations Manual in effect on the date of the Accident which UAL  
15 reasonably believes is relevant to this matter. See Exhibits R and S. UAL has not  
16 identified a single such section.

17 17. With respect to UAL's request for "Publications Required To Be On  
18 Board" and "Routing" documents, the witnesses are not in possession or control of  
19 such documents. However, in addition to the Operations Manual and B777  
20 Airplane Operations Manual, the witnesses were able to provide the relevant  
21 Jeppesen Charts that were the only routing documents relevant to the taxiing of the  
22 subject Aircraft. Attached hereto as Exhibit T is a true and correct copy of the  
23 relevant Jeppesen Charts that had previously been produced in September 2007 in  
24 ANA's Initial Disclosure as Bates Nos. ANA 001067-001070. UAL's own pilots  
25 testified similarly that Jeppesen was the relevant document. Attached hereto as  
26 Exhibit AA is a true and correct copy of the relevant pages of the deposition of  
27 Brad Powell.  
28



1 18. Finally, in my Declaration in Support of ANA's Production of Documents,  
2 I stated that with respect to the document requests contained in UAL's Notice of  
3 Deposition, "ANA believes it has produced all relevant documents that are  
4 responsive to UAL's requests." Attached hereto as Exhibit BB is a true and correct  
5 copy of the Declaration of Marshall S. Turner in Support of ANA's Production of  
6 Documents.

7 19. In UAL's Request for Production, No. 5, UAL requests the recording from  
8 the Cockpit Voice Recorder ("CVR") that was in ANA's aircraft on the date of the  
9 accident, "reflecting all conversation between the ANA crew and United ramp  
10 control, air traffic control, ground personnel and/or between the ANA pilots." In  
11 its Supplemental Response, ANA directed UAL to the statutes prohibiting  
12 discovery of the CVR recording. See Exhibit H attached hereto.

13 20. The recordings reflecting conversation between the ANA flight crew and  
14 United Ramp Control and conversation between the ANA flight crew and air  
15 traffic control have already been produced by ANA under Bates No. ANA 001134.  
16 There was no conversation between the ANA flight crew and ground personnel  
17 while the ANA aircraft was taxiing. The conversations among the ANA pilots in  
18 the cockpit are reflected in the statements provided by each member of the flight  
19 crew immediately following the Accident. Attached hereto as Exhibit U are true  
20 and correct copies of ANA's flight crew's statements.

21 21. ANA preserved its CVR after the Accident and submitted its CVR to the  
22 National Transportation Safety Board ("NTSB"), who found that it "contained the  
23 most recent two hours of the flight operation" in fair to excellent condition, but  
24 concluded that "no data could contribute to determining the probable cause.  
25 Therefore, no transcript was prepared." Attached hereto as Exhibit V is a true and  
26 correct copy of the NTSB Group Chairman's Factual Report concerning ANA's  
27 CVR.  
28

1 22. UAL failed to preserve its CVR data as the NTSB determined that "The  
2 audio was consistent with the CVR being overwritten by subsequent events."  
3 Attached hereto as Exhibit W is a true and correct copy of the NTSB Specialist's  
4 Factual Report on UAL's CVR.

5 23. In its Cockpit Voice Recorder Handbook for Aviation Accident  
6 Investigations, the NTSB notes that CVR recordings "contain highly sensitive  
7 information" and that NTSB staff and Members are "bound by Federal CVR  
8 nondisclosure laws" (referring to 49 U.S.C. § 1114). Attached hereto as Exhibit X  
9 is a true and correct copy of the relevant pages of the NTSB Cockpit Voice  
10 Recorder Handbook for Aviation Accident Investigations. See § 3.1.

11 24. UAL asks this Court to grant it additional time to depose ANA's flight  
12 crew beyond the seven hours provided by the Federal Rules of Civil Procedure  
13 Rule 30(d)(1). UAL Motion, pages 16-20.

14 25. UAL argues that it will need additional time to question these witnesses  
15 primarily because ANA withheld documents. UAL Motion, page 17. In  
16 accordance with the foregoing, ANA's witnesses produced all responsive  
17 documents in their possession at their depositions and ANA has appropriately  
18 responded to all of UAL's document requests. UAL chose not to question the  
19 witnesses at all with respect to many of the documents.

20 26. UAL argues that its deposition time was shortened by the use of a  
21 interpreter when "all three pilots fluently speak and understand English." UAL  
22 Motion, page 18. UAL questioned each witness with respect to his English  
23 language proficiency and each witness indicated the need for the interpreter. See  
24 deposition transcripts at Exhibit I, 11:22-25, 16:15-19; Exhibit J, 5:24-6:5; Exhibit  
25 K, 32:6-9.

26 27. UAL argues that ANA unilaterally and prematurely terminated Mr.  
27 Yamaguchi's deposition. UAL Motion, page 16. However, ANA offered to allow  
28



1 UAL to continue, even though UAL's counsel had repeated numerous questions  
2 many times over, and UAL refused the offer to continue. Exhibit I, 137:17-20.

3 28. UAL moves for additional time to depose ANA's flight crew, but UAL  
4 failed to use the time allotted and available for the depositions of Mr. Nishiguchi  
5 and Mr. Usui. UAL's counsel elected to conclude the deposition of Mr.  
6 Nishiguchi after five hours and twenty-five minutes of on-the-record time and  
7 stated, "I don't have any other questions." See Exhibit J, 114:23-24. Attached  
8 hereto as Exhibit Y is a true and correct copy of the record of running time for each  
9 deposition. UAL's counsel terminated Mr. Usui's deposition after five hours and  
10 forty-one minutes of on-the-record time and stated, "I don't have any further  
11 questions." Exhibit Y; and Exhibit K, 107:22-23.

12 29. UAL consumed considerable time during these depositions repeatedly  
13 asking the same questions over and over again. See Exhibit I, 78:24-81:17, 83:1-  
14 90:5, 119:12-122:21; Exhibit J, 42:9-56:23; and Exhibit K, 35:1-52:6.


15 30. In accordance with the foregoing and ANA's Brief in Opposition to  
16 Defendant's Renewed Motion to Compel, UAL's arguments are without merit and  
17 should be denied in their entirety.

18 I declare under penalty of perjury under the laws of the United States of  
19 America that the foregoing is true and correct.

20 Executed this 19<sup>th</sup> day of February, 2008, at New York, New York.

21  
22   
23 Marshall S. Turner

24 Sworn to before me this  
25 19th day of February, 2008

26   
27 Notary Public  
28 TINA M. ZOCCALI  
Notary Public, State of New York  
No. 01ZO6059025  
Qualified in Rockland County  
Commission Expires May 21, 2011